IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION LODGING NO. 743 OF 2007

Savannah Leisure Pvt. Ltd. .....Petitioner.

V/s

State of Maharashtra through
the Hon'ble Minister (State Excise),
Mantralaya Mumbai & Ors. .....Respondents.

Mr. C.U. Singh, Senior Counsel with Mr. Soma Singh i/b Ms. Bobby Malhotra for the Petitioner.

Mr. K.R. Belosey, Acting G.P., for Respondent Nos. 1 to 3.

Ms. Veena Thadani for Respondent No.4.

CORAM: V.M. KANADE, J.
DATE : 30th April, 2007

P.C.:-

1. Rule.

2. Rule is made returnable forthwith by consent of the parties. Respondents waive service.

3. Heard the learned Counsel appearing on behalf of the Petitioner, and the learned Counsel appearing on behalf of Respondents.

4. Petitioner is challenging the order passed by the Hon'ble Minister in Appeal Application under section 138 of the Mumbai Prohibition Act, 1949 which was taken out by the Respondent No.4 herein. By the said order, the Minister of State was pleased to set aside the order passed by the District Collector Mumbai dated 08/12/2004 and the order passed in appeal by the Commissioner, State Excise dated 07/06/2006 and was pleased to suspend the FL-III licence which was granted by the aforesaid authority.

5. Brief facts which are relevant for the purpose of deciding the present Petition are as under:-

6. The Petitioner and the Respondent No.4 executed three agreements. The first agreement was a leave and licence agreement and the other agreements were revenue/profit sharing agreements. By the aforesaid agreements, the Respondent No.4, who is the owner of the premises situated at Juhu, permitted the Petitioner to carry on restaurant business. Thereafter, another MOU was executed on 23/12/2007 between the parties whereby the consideration payable to the Respondent No.4 was enhanced from Rs 2.5 lakhs per month

to Rs 3.5 lakhs per month. A complaint was filed by Respondent No.4 some time in January, 2006 after, according to the Respondent No.4, she had obtained information that the NOC which was submitted by the Petitioner herein for obtaining FL-III licence on their letter head dated 24/05/2004 was forged. After, according to the Respondent No.4, she came to know that the said document had been forged, she applied for further information under the Right to Information Act and obtained various other documents. Thereafter, she filed a complaint to the Commissioner, State Excise, seeking cancellation of the licence which was granted by the Collector. The Commissioner, after hearing both parties, was pleased to confirm the licence granted by the Collector. In the complaint which was filed by the Respondent No.4, the principal contention which was raised was that, on the NOC, which was submitted by the Petitioner herein, her signature was forged and secondly it was contended that there was a pre-primary school of Manekjee Cooper Trust which was situated at the distance of 53 meters away from the licenced premises and that no approval from any local authority had been obtained as required under the provisions of the Bombay Foreign Liquor Rules, 1953. It is submitted that the several complaints had been filed in the Santacruz Police Station and there are as many as 39 cases which are pending against

the present Petitioner. The Commissioner in his order observed that the main school which was managed by the Manekjee Cooper Trust was situated at the distance of 107 meters from the licence premises of the Respondent No.4 and that the pre-primary classes which were situated at the distance of 53 meters were not recognized by any local authority as required under Rule 25(2) of the Bombay Foreign Liquor Rules, 1953 and, therefore, rejected the said contention raised by the Respondent No.4. The Commissioner of State Excise also observed that since allegation of fraud and misrepresentation had not been established before any competent Court, the order of Collector was upheld.

7. Mr. Singh, the learned Counsel appearing on behalf of the Petitioner submitted that the Minister of State has suspended the licence only on the ground that the complaint of forgery and fabrication of documents was pending in the Court and that during the pendency of these proceedings, he felt that it was necessary to suspend the said licence. He submitted that this Court in catena of cases has observed that merely because cases are pending in the Court that by itself would not be a ground to revoke the licence which has already been granted. He invited my attention to the agreement

executed between the parties as also various disputes which are pending in various courts. He submitted that, therefore, the order passed by the Hon'ble Minister was liable to be set aside.

8. Ms. Thadani, the learned Counsel appearing on behalf of Respondent No.4, on the other hand, submitted that the Petitioner had violated terms and conditions of the agreement and that he has blatantly violated the orders passed by the City Civil Court and other authorities. She submitted that as many as 39 complaints are pending against the Petitioner in the Santacruz Police Station and in spite of these complaints the petitioner was blatantly carrying on its business of restaurant and was also running a Bar on the beach front. She submitted that the signature which was allegedly made by Respondent No.4 on the NOC was obviously forged which could be seen from the fact that her signature on the other documents did not tally with the signature which was made on the said NOC. She submitted that, further, an opinion was obtained by the police authorities from the handwriting expert who had given his opinion that the said signature is forged. She also submitted that the Respondent No.4 never signed in the name of Thakker and the word "kk" used in the surname "Thakker" were also never used by her.

She submitted that, therefore, the said forgery was clearly visible and it was not even necessary to obtain an opinion of expert. She submitted that the Minister had also taken into consideration that the licenced premises were at a distance of 53 meters from the pre-primary school. She also relied upon the judgment of the Supreme Court in Vikrama Shama Shetty Vs. State of Maharashtra and Ors reported in **AIR 2006 SC 2792** in which the Supreme Court had held that the authorities were justified in refusing the licence in cases where the premises were situated within the prohibited distance of 75 meters from the mosque. She also invited my attention to various photographs which showed that the bar was situated near the beach.

9. In the present case, it is an admitted position that the Petitioner and the Respondent No.4 have executed agreements, as a result of which the Petitioner has been put in possession of the said premises. There was a revenue/profit sharing agreement between the two parties and the Respondent No.4 was very well aware that the premises was going to be used as a restaurant and bar. After certain disputes arose between the parties, a fresh MOU has been executed by Respondent No.4 with the Petitioner on 23/12/2004. One of the clauses in the said agreement clearly stipulates that the Petitioner

would be permitted to obtain excise licence. The present complaint had been filed almost after a lapse of 13 months after FL-III licence was obtained. It is further an admitted position that the Respondent No.4 is residing on the first floor of the premises. It is difficult to imagine that having noticed that the Petitioner was carrying on restaurant and bar on the ground floor, no complaint had been made by her for a period of 13 months.

10. Be that as it may, the fact remains that there is a civil dispute between the parties. Several police complaints have been lodged by Respondent No.4 against the present Petitioner. An anticipatory bail order has been granted to the Directors of the Petitioner on a complaint which was lodged by Respondent No.4. In the face of this material and particularly the fact that the MOU was executed by Respondent No.4 on 23/12/2004, as long as the said dispute is not decided by the competent court, there is no question of suspending the licence during this period. This Court in catena of cases has held that merely because the dispute or complaint is pending against the party, that by itself cannot be the ground for revoking or not renewing the licence by the licensing authority. In the present case, the Hon'ble Minister has suspended the licence merely because some

complaints have been filed by Respondent No.4 who is the owner of the premises, alleging that the NOC has been forged by the Petitioner herein. It is no doubt true that in the police report an observation has been made that the complaint is lodged by them after obtaining handwriting expert's opinion. It is a well settled position in law that the opinion of an expert also has to be proved in the Court of law and, for that purpose, he has to give evidence and is also subjected to cross-examination by the counsel for the accused. Therefore, merely because handwriting expert has given an opinion that the signature is forged cannot form the basis for suspending the licence which is already granted. Lastly, it can be seen that the pre-primary school is not registered with the local authority as required under Rule 25(2) of the Bombay Foreign Liquor Rules, 1953. Even the Minister in his order in para 4 has observed as under:-

> "However, it is not found that as per Government decision, School Education Department dated 16th March, 1996 registration with the concerned authority has not been done for conducting pre-primary classes on the ground floor of Brijcraft Society as mentioned above."

From these observations, it is apparent that the only ground on which the Hon'ble Minister has suspended the licence is on account of pendency of cases between the parties in the Court. In the case of Vikrama Shama Shetty (surpa) on which the reliance has been placed by the learned Counsel for Respondent No.4, an application for licence was made and the said application was not granted on the ground that the establishment of the party was within 75 meters from the mosque. The ratio of the said judgment, therefore, is not applicable to the facts of the present case inasmuch as the pre-primary school is not registered with the local authority as required under Rule 25(2) of the Bombay Foreign Liquor Rules, 1953 It is obvious, therefore, that the Hon'ble Minister has committed an error of law which is apparent on the face of record. The impugned order passed by the Hon'ble Minister is, therefore, set aside and the Orders passed by the Commissioner of State Excise and Collector are confirmed. Rule is made absolute accordingly in terms of prayer clauses (a) & (a-1).

11. Office to number the Petition.

(V.M. KANADE, J.)